

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-035
P. H. McCarthy, Jr.)	July 2, 1975
The State Building and Construction)	
<u>Trades Council</u>)	

BY THE COMMISSION: We have been asked the following questions by P. H. McCarthy, Jr., Attorney for the State Building and Construction Trades Council:

The State Building and Construction Trades Council of California is a state body of affiliated local buildings and construction trade councils, craft councils and local unions. The officers of the Council consist of a president, secretary-treasurer, two vice-presidents, 24 district executive board members, plus four officers who are ex officio members. The president and one full-time staff member are full-time salaried officials; the secretary-treasurer is a part-time salaried official. The Council also has a legislative committee of the executive board consisting of five members who are appointed by the president from time to time. Local state district and craft councils pay a monthly per capita tax depending on the number of members of their affiliate. With respect to legislation, the full-time staff member acts and registers as a lobbyist. He is under the direction of the president, subject to the executive board and the legislative committee. Historically, the Council has participated actively in the political life of the state at all levels of government, including contributing to various election campaigns in the State of California.

- (1) May the Council continue to act through its lobbyist in the future as it has in the past?
- (2) May its executive board, legislative committee, president and legal staff continue to act in the future as they have in the past?
- (3) If an employee spends forty hours lobbying in a two month period, is he required to register even though the portion of his salary allocated to lobbying activities is less than \$1,000 per month?

- (4) If the answer to these questions is negative, is there any way in which the Council may continue to carry out its historical function by way of restructuring or modification?

CONCLUSION

(1) The Council may continue to employ a lobbyist subject to the reporting requirements of Government Code Section 86109.^{1/}

(2) No restrictions as to contributions are imposed on the executive board, legislative committee, president or legal staff, so long as they are not lobbyists.

(3) A salaried official who spends forty hours of which at least ten hours are in direct communication for which compensation is received during any period of two consecutive calendar months influencing or attempting to influence legislative or administrative action is a lobbyist (2 Cal. Adm. Code Section 18239) regardless of the amount of his compensation. The \$1,000 test is an additional test applied to an individual who does not spend forty hours in a two-month period.

(4) No restructuring of the Council's organization is required.

ANALYSIS

(1) The Commission has previously considered the structure of a statewide labor organization in California Labor Federation AFL-CIO, FPPC Opinion No. 75-004, 1 FPPC Ops. 28. The organization and operation of the Council appears to be markedly different from that of the California Labor Federation, however, in that the Council's sole lobbyist is a full-time staff member, not an elected official of the Council. This staff member is prohibited from making political contributions or from arranging for the making of such contributions. Section 86202. There is no restriction imposed on the Council itself and its traditional political activities. Neither its contributions nor endorsements are in any way precluded by the Political Reform Act.

The Council may continue to employ a lobbyist subject to the reporting requirements of Section 86109. This lobbyist may communicate the views of the Council to legislative and administrative officials in the manner he has used in the past. His

1/

All statutory references are to the Government Code unless otherwise noted.

activities are subject to the restrictions of the Political Reform Act including the reporting requirements, the limitation placed on gifts aggregating more than \$10 in a calendar month, and the prohibition against making, acting as an intermediary, or arranging for campaign contributions in cash or in kind. Sections 86202-86203.

(2) No restrictions are imposed on the executive board, legislative committee, president or legal staff, so long as they are not lobbyists within the meaning of the Act. The political activities of these persons are in no way curtailed or hampered by the Act. They may endorse candidates, make political contributions, or take any other political action desired by the organization and its members.

It is presumed that none of these individuals exercises direct supervision over the day-to-day activities of the lobbyist. However, if it were determined that the president, for example, directly supervises and gives orders to the lobbyist in his lobbying activities, then the lobbyist would be his agent and the president becomes himself a lobbyist subject to the restrictions of the Act. 2 Cal. Admin. Code Section 18239(c) and Gov. Code Section 82039.^{2/}

(3) Lobbying activities must be on a substantial or regular basis to bring an individual within the definition of "lobbyist" in Section 82039. A regulation adopted by the Fair Political Practices Commission defining the term "lobbyist" has created threshold tests to guide an individual's determination of whether his lobbying activities are "substantial or regular." A lobbyist comes within the statutory definition if either of the two following tests are met:

- (a) Spending forty hours for which compensation is received of which at least ten hours are in direct communication, during any two consecutive calendar months influencing or attempting to influence legislative or administrative action.
- (b) Receiving or becoming entitled to receive \$1,000 or more in any 30-day period for the purpose of communicating directly with legislative, administrative or state elective officials. A person shall not become a lobbyist because he receives or becomes entitled to receive such amounts as reim-

^{2/} Section 82039 states: "'Lobbyist' means any person who is employed. . .to communicate directly or through his agents. . ."

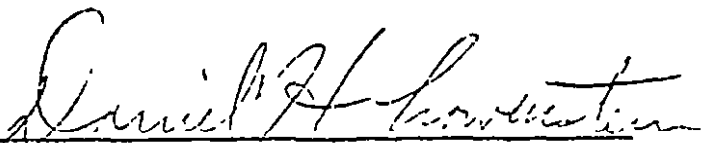
bursements for reasonable travel expenses or as wages which would be received as a full time employee engaged primarily to perform services other than influencing or attempting to influence legislative or administrative action. . . .

2 Cal. Adm. Code Section 18239(a)(2).

A salaried official who spends forty hours for which compensation is received during any period of two consecutive calendar months influencing or attempting to influence legislative or administrative action is a lobbyist, regardless of the amount of his compensation. The \$1,000 test is an additional one to be applied to an individual who does not spend forty hours in a two-month period. It applies to a person who receives \$1,000 or more in any calendar month as compensation only for his activities influencing or attempting to influence legislative or administrative action and does not apply to a full-time employee whose primary job is not influencing legislative or administrative action.

(4) No restructuring of the Council's organization is required.

Approved by the Commission on July 2, 1975. Concurring: Brosnahan, Carpenter, Lowenstein and Miller. Commissioner Waters was absent.


Daniel H. Lowenstein
Chairman